

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ADRIANA ORNELAS, as Administrator of)	
the Estate of RODOLFO ROMO, Deceased,)	
)	
Plaintiff,)	
)	
vs.)	Civil No. 15-CV-00547
)	
THE UNITED STATES OF AMERICA,)	
)	
)	
Defendant,)	
)	
vs.)	
)	
TOTALL METAL RECYCLING, INC.)	
)	
Third-Party Defendant.)	

RESPONSE TO PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT

Comes now the third party defendant, Totall Metal Recycling, Inc., by its attorneys, Donovan Rose Nester, P.C. and for its Response to Plaintiff's Motion to Enforce Settlement, states as follows:

1. Counsel for Totall Metal Recycling has been engaged in extensive and perhaps exhaustive negotiations with the Department of Justice¹ with regard to the terms and conditions of the Stipulation For Compromised Settlement and Release of Contract Claims and Federal Tort Claim Act Claims Pursuant to 28 U.S.C. §2677 (hereinafter "Settlement Agreement") between the United States of America and Totall Metal Recycling, Inc.

2. The aforementioned negotiations have consumed extensive periods of time because of demands made by the Department of Justice concerning the terms and conditions of the Settlement

¹ The Assistant United States Attorneys assigned to this case have at all times conducted themselves professionally and have been extremely helpful in attempting to expedite the process.

Agreement that were believed by Totall Metal Recycling to be on occasion inappropriate, overreaching, unilateral, and burdensome². Nevertheless, counsel for the United States of America has proposed a revision to the Settlement Agreement that may significantly reduce, if not eliminate, Totall Metal Recycling's concerns regarding the prior demands for indemnification. Said proposal was made late Thursday, May 18, 2017. Totall Metal Recycling is in the process of reviewing said proposal, which will also require the approval of Totall Metal Recycling's two (2) insurance carriers.

3. Given the aforementioned recitation of events, Totall Metal Recycling disagrees with the characterization of its conduct as "recalcitrant and obstreperous in concluding this matter". Totall Metal Recycling contends that it has always conducted itself in a professional and reasonable manner while engaged in negotiations with the Department of Justice and that its efforts were necessary to protect its interests in regard to terms and conditions imposed by the Department of Justice which were unacceptable to Totall Metal Recycling and inconsistent with its perceived legal obligations under the negotiated settlement.

4. Totall Metal Recycling should be able to notify the United States of America of its position with respect to said recent overture on or before Wednesday, May 24, 2017. Obtaining the insurance carrier's consents, will in all probability, require additional time. Totall Metal Recycling is in agreement that plaintiff should and must receive "their money instant", subject to the approval by Totall Metal Recycling and its insurance carriers of the United States of America's most recent draft of the Settlement Agreement.

WHEREFORE, based on the foregoing analysis, third party defendant, Totall Metal Recycling, Inc. respectfully moves this court to grant plaintiff's Motion to Enforce Settlement, subject to

² For example, the Department of Justice has insisted on provisions which require Totall Metal Recycling to indemnify the United State of America for potential future claims (claims which have neither been asserted nor identified). Said insistence has raised a number of issues with respect to Totall Metal Recycling. For example, Totall Metal Recycling does not even know whether it has insurance with respect to said inchoate claims.

approval of the current draft of the Settlement Agreement between the United States of America and Totall Metal Recycling.

BY: /s/MICHAEL J. NESTER

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**ATTORNEYS FOR COUNTERPLAINTIFF,
TOTAL METAL RECYCLING, INC.**

CERTIFICATE OF FILING AND SERVICE

I, Michael J. Nester, an attorney, on oath hereby certify that on May 19, 2017, I electronically filed the foregoing document, **RESPONSE TO PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**, with the Clerk of the U.S. District Court, Southern District of Illinois, using the Court's ECF filing system, and served all parties and their counsel of record by operation of the Court's ECF filing system.

/s/MICHAEL J. NESTER

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In The United States District Court For the Southern District of Illinois

Cause No. 15-CV-00547-SMY-SCW

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